

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ISIAH WILSON, JR.,

Plaintiff,

Case No. 2:14-CV-00245-RSM-BAT

V.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

## Defendant.

## **REPORT AND RECOMMENDATION**

On February 21, 2014, Isiah Wilson, Jr. filed a pro se complaint against the Acting Commissioner of Social Security (“Commissioner”), alleging:

I was a taxi cab driver a lady ran a red light T boned my cab I file for disability in 1997. I didn't have medical insurance I came to Washington got some insurance any way I got awarded back pay and social security said they don't have any paperwork or anything saiding I have money coming but my and the law has all paperwork SSI told me 5 deffent storys. All of lies now the senior Catwell office been helping me for the lase two months still no one can't tail me anything about anything. All the time my health is getting worse and nobody seem to care!

21 Dkt. 4. The complaint alleged the Court had jurisdiction over the matter because “Social  
22 security is telling me lieds about my case (back pay).” *Id.* In lieu of an answer, the  
23 Commissioner filed a motion to dismiss. Dkt. 17. Although the motion is brought under both

1 Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), the thrust of the Commissioner's  
2 argument is that the complaint should dismissed under Rule 12(b)(6) for failure to state a claim  
3 for mandamus or other relief. Dkt. 17 at 2-6. Mr. Wilson has not responded to the  
4 Commissioner's motion. Having reviewed the motion and record, the Court recommends the  
5 Commissioner's motion be **GRANTED** and the complaint be **DISMISSED** without prejudice.

6 **BACKGROUND**

7 The Commissioner avers that this is not a case in which the Social Security  
8 Administration ("SSA") entered a final decision denying Mr. Wilson's application for disability  
9 benefits. *See* Dkt. 17. Rather, the Commissioner alleges Mr. Wilson began to receive disability  
10 benefits in April 2009. *See* Dkt. 17 (Declaration of Jill Barry). On July 18, 2013, the SSA  
11 issued a favorable decision finding Mr. Wilson disabled and amending his disability onset date  
12 from April 2009 to March 18, 2005. The decision had a positive impact on Mr. Wilson's  
13 disability application: it created an entitlement to past due benefits. However because the July  
14 2013 decision found Mr. Wilson was disabled due to severe mental impairments, the SSA  
15 initiated a capability determination to determine whether a representative payee was necessary  
16 before the SSA could issue payment for the back due benefits. On May 12, 2014, Mr. Wilson  
17 was interviewed at the Bellevue Social Security Field Office and found to be capable of  
18 managing his own funds. The SSA alleges that it is working with Mr. Wilson to determine the  
19 correct amount of his back payment, and that as long as he continues to cooperate with the SSA  
20 as the agency gathers information to process his back payments, the agency will be able to  
21 correctly process his back pay award. *Id.* at 2.

22 **DISCUSSION**

23 The Commissioner argues the Court should dismiss the complaint under Rule 12(b)(6),

1 for failure to state a claim upon which relief can be granted. A dismissal under Rule 12(b)(6)  
2 may be based on the lack of a cognizable legal theory or on the absence of sufficient facts  
3 alleged under a cognizable legal theory. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
4 Thus “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter,  
5 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556  
6 U.S. 662, 663 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In  
7 determining whether to grant a Rule 12(b)(6) motion, the Court must accept as true all “well-  
8 pleaded factual allegations” in the complaint. *Iqbal*, 556 U.S. at 679. The Court, however, is not  
9 bound to accept as true labels, conclusions, formulaic recitations of the elements, or legal  
10 conclusions couched as factual allegations. *Twombly*, 550 U.S. at 555.

11 Here, Mr. Wilson’s complaint is vague and difficult to decipher. The complaint appears  
12 to express dissatisfaction with the manner in which the SSA is processing Mr. Wilson’s back due  
13 payments in that it alleges the SSA told him he had “money coming,” told him five different  
14 stories about his “paperwork,” and that though two months went by, no one at the SSA can tell  
15 him “anything about anything.” Dkt. 4. However, the complaint presents no facts establishing  
16 that the SSA’s handling of the matter is actionable, i.e., that assuming the truth of Mr. Wilson’s  
17 allegations the SSA violated a regulation, policy, statute or other legal requirement. Even  
18 assuming there is a basis for Mr. Wilson to be dissatisfied with the manner in which the SSA is  
19 processing his back due payment, dissatisfaction, alone, is insufficient to state a claim upon  
20 which relief may be granted. *C.f., Vierra c. California Highway Patrol*, No. 09-305-KJM-GGH,  
21 2011 WL 2971170 at \* 11 (E.D. Cal. 2011) (unreported) (Plaintiff failed to set forth claim for  
22 relief against defendant carrying out worker’s compensation investigation where plaintiff has  
23 only shown she was “unhappy” with investigator’s manner and the subject matter of his

1 questions).; *Ismail v. Wells Fargo Bank, N.A.*, No. 12-1653-MCE-CKD, 2013 WL 4516122 at  
 2 \*8 (E.D. Cal. 2013) citing *Lariviere v. Bank of N.Y. as Tr.*, No. 9-515-P-S, 2010 WL 2399583  
 3 at \*4 (D.Me. 2010) (“Many people in this country are dissatisfied and upset by [the  
 4 securitization] process, but it does not mean that the [plaintiffs] have stated legally cognizable  
 5 claims against these defendants in their amended complaint.”); *Glick v. Molloy*, No. 11-168-  
 6 DWM-JCC, 2012 WL 1155207 at \*6 (D. Mont. 2012) (unreported) (Litigant dissatisfied with  
 7 delays attendant with rules governing amendment of a complaint fails to state a claim for relief.).

8       The Commissioner posits another possible interpretation of the complaint—that the  
 9 complaint seeks mandamus relief. Dkt. 17 at 4. The Commissioner contends that even if the  
 10 Court viewed the complaint as seeking issuance of a writ of mandamus compelling the SSA to  
 11 pay Mr. Wilson’s back due benefits, the matter should nonetheless be dismissed. *Id.* The Court  
 12 agrees. Under 28 U.S.C. § 1361, federal district courts “shall have original jurisdiction of any  
 13 action in the nature of mandamus to compel an officer or employee of the United States or any  
 14 agency thereof to perform a duty owed to the plaintiff.” The U.S. Supreme Court has not  
 15 decided whether the jurisdictional restriction in § 405(h) prohibits federal courts from hearing  
 16 mandamus cases in social security cases, and instead has evaluated mandamus separately,  
 17 assuming that mandamus jurisdiction may be invoked in such cases. *Heckler v. Ringer*, 466 U.S.  
 18 602, 616 (1984); see also *Kildare v. Saenz*, 325 F.3d 1078, 1083-84 (9th Cir. 2003).

19       Mandamus jurisdiction is available only if “(1) the individual’s claim is clear and certain;  
 20 (2) the official’s duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from  
 21 doubt, and (3) no other adequate remedy is available.” *Kildare*, 325 F.3d at 1084 (quotation  
 22 omitted). Mr. Wilson’s complaint fails to meet these requirements. First, as discussed above,  
 23 the complaint is anything but clear. Second, the SSA avers it is currently processing Mr.

1 Wilson's back due award and there is nothing showing the SSA has violated a plainly proscribed  
2 nondiscretionary duty regarding the manner in which it is handling Mr. Wilson's back due  
3 payments. And finally, the SSA avers it seeks to work with Mr. Wilson to process his back due  
4 award and to begin making payments to him; Mr. Wilson thus has an adequate remedy regarding  
5 his back due payments. In short, the complaint fails to allege facts upon which a claim for  
6 mandamus relief may be granted.

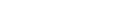
7 **CONCLUSION**

8 For reasons above, the Court recommends **GRANTING** the Commissioner's motion to  
9 dismiss and **DISMISSING** the case without prejudice. The complaint fails to plead sufficient  
10 facts to state a claim for mandamus or other relief. While Mr. Wilson may be dissatisfied with  
11 the SSA's handling of his back due payments, his dissatisfaction, alone, is insufficient grounds to  
12 establish mandamus or other relief. While the matter should be dismissed, it should be dismissed  
13 without prejudice because the Court cannot foresee the future or whether at some point grounds  
14 for mandamus or other relief will arise.

15 This Report and Recommendation is not a final decision and Mr. Wilson should therefore  
16 not file an appeal with the Court of Appeals for the Ninth Circuit. However, he may, if he  
17 wishes, file an objection to this Report and Recommendation. Any objection must be filed and  
18 served by **July 7, 2014**. If no objections are filed, the Clerk should note the matter for **July 11,**  
19 **2014** as ready for the Court's consideration. If objections are filed, any response is due within  
20 14 days after being served with the objections. A party filing an objection must note the matter  
21 for the Court's consideration 14 days from the date the objection is filed and served. Objections  
22 and responses shall not exceed five pages. The failure to timely object may affect the right to  
23 appeal.

The Clerk shall provide a copy of this Report and Recommendation to the parties and to the Honorable Ricardo S. Martinez.

DATED this 20<sup>th</sup> day of June, 2014.

  
BRIAN A. TSUCHIDA  
United States Magistrate Judge